

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

April 18, 2011

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall on Monday, April 18, 2011 at 7:00 p.m. The meeting was called to order by the Vice President Mike Compton and all were asked to stand for the Pledge of Allegiance.

Clerk Block's roll call showed the following;

Dale "Woody" Emmons 1st District Councilman – Present
Mike Bellovich 2nd District Councilman – Present
Ross Deal 3rd District Councilman - Present
Marsha McClure 4th District Councilman - Present
Michael Compton 5th District Councilman - Present
Ronald Banicki 6th District Councilman – Present
John Gleissner, Councilman At Large – Absent
Gregg Hixenbaugh, Councilman At Large – Present
John J. Roggeman, Councilman at Large – Present
A quorum was obtained.

Others present; Deborah S. Block, City Clerk; Mary Ellen Hazen Chief Deputy I, Linda Dotson, Chief Deputy II, and Council Attorney Mike Trippel.

The minutes from the April 4, 2011 meeting were approved as received from the Clerk's Office.

Clerk Block read a letter from the Board of Zoning Appeals regarding recommendations from their April 12, 2011 meeting.

APPEAL NO. 11-14 An appeal submitted by Helman Commercial Realty LLC, an Indiana Limited Liability Company, requesting a Use Variance for 1017 East Jefferson Boulevard to allow auto repair and sales within a C-1 General Commercial property. **RECOMMENDED APPROVAL** with the following conditions:

1. Use variance shall be limited to automobile repair and sales. No outside storage of materials and/or vehicle parts shall be permitted.
2. If floor drains in building do not exist, then an oil/grit interceptor will not be required. If floor drains do exist, oil/grit interceptor will be required for the shop area and cleaning detail station.
3. If oil/grit interceptor is required, a site plan shall be submitted detailing sanitary sewer layout with installation of the oil/grit interceptor,. Plan shall include its size, location with respect to interior plumbing, and verify that restroom plumbing is down stream of unit.

4. Signage on this site needs to be located a safe distance from the Jefferson Boulevard right-of-way, and shall adhere to signage standards for the C-4 Automobile Oriented Commercial district.
5. Site shall comply with commercial landscape requirements. Landscaping shall be added as needed.
6. Any building modification shall be submitted to the Planning and Building department for review and all appropriate building permits shall be obtained.

APPEAL NO. 11-15 An appeal submitted by John Cataldo requesting a Use Variance for 3515 Bremen Highway to allow more than two (2) tenants on C-1 General Commercial zoned property. **RECOMMENDED APPROVAL**

Clerk Block read a letter from the Plan Commission regarding recommendations from their April 12, 2011 meeting.

PETITION NO. 11-07 A petition has been submitted on behalf of Anna M. Zirille, by Daniel Bilancio, Personal Representative, to rezone 1111 Division Street from I-1 Light Industrial District to R-1 Single Family Residential District. **RECOMMENDED APPROVAL.**

The following proposed ordinances were given first reading, assigned to committee, and set for public hearing at the next regular meeting.

PROPOSED ORDINANCE NO. 2011-04

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS “THE ZONING ORDINANCE OF 1966” OF THE CITY OF MISHAWAKA, INDIANA
(Rezone from I-1 Light Industrial to R-1 Single Family – 1111 Division St.).
Petitioner requested first and second reading.

Mr. Banicki made a motion to suspend Council Rules and hear this petition, with a second by Mr. Hixenbaugh the motion carried. Vice President Compton stated Proposed Ordinance No. 2011-04 would be heard under New Business.

Clerk Block read **RESOLUTION NO. R2011-04** opening it for public hearing.

RESOLUTION NO. R2011-04

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:
1017 East Jefferson Boulevard, Mishawaka, Indiana
(Use Variance to allow C-4 Automobile Oriented Commercial Use for Auto Repair and Sales)

Dr. Max Helman 17299 Pinecrest, Granger said he had someone interested in renting this space from him for Auto Repair & Sales. Mr. Emmons asked if there would be auto sales on this lot. Dr. Helman stated he did not think it would be a sales lot but maybe an occasional sale of a vehicle. Mr. Emmons asked if there would be any outside parking. Dr. Helman stated there was plenty of storage inside the building, there would not be any auto parts stored outside. Mr. Emmons said he had concerns of a wrecked vehicle being stored outside the building and asked if there would be a wrecker service operating from this location. Dr. Helman said not to his knowledge. Mr. Emmons asked for the name of the renter, Dr. Helman said David Luna.

Mr. Deal stated the Plan Commission recommended approval of this subject to a number of conditions have all of those conditions been met. Dr. Helman said they were. Mr. Deal said he was seeing that Mr. Prince was disagreeing with that statement. He said he would like to follow up with if the conditions have not been met was he willing to meet all of the conditions. Dr. Helman said he thought they had all been met. Mr. Deal said there was the issue of floor drains, grid interceptors, and signage. Dr. Helman said there should not be any oil spills, they do have one drain in the middle of the building that was used originally when the bakery trucks were being washed, and they would be blocking that drain permanently.

Mr. Compton asked if his future tenant was working out of another location presently. Dr. Helman said he believed he was working out of his residence. Mr. Compton asked if there were any employees. Dr. Helman did not know. Mr. Compton said he concurred with Mr. Emmons on his concerns as to how large of operation this would be since the property was not that large to begin with. Mr. Compton said he understood Dr. Helman's plight trying to keep this building rented since he has been before the Council several times but the Council wanted to make sure it would be the right business for that location.

Mr. Emmons thought it would be beneficial to table this request until the Council was able to talk with the potential renter who would be able to answer more specifically what his plans were for this business, as not to Dr. Helman on the spot. Dr. Helman said he could assure the Council that Mr. Luna was not that interested in selling cars but if he should put a for sale sign on a car he did not want to be in violation.

Mr. Compton said he would like to hear from Mr. Prince first.

Mr. Deal asked Mr. Prince to clarify how many of the conditions set out by the Plan Commission had been met. Ken Prince City Planner, said Dr. Helman has addressed the landscaping and the Planning Department would be re-evaluating it to make sure it was up to code. He said more specifically the floor drains, there was a difference between washing vehicles and repairing them, the oil interceptor would have to be inspected prior to the occupancy to the building. Mr. Deal asked how substantial of an investment the interceptor was. Mr. Prince stated said he would imagine it was in the thousands of dollars but would not imagine more then \$10,000.00, and would depend on the type of work being done. Mr. Deal asked were the Council to approve this would still be a condition and had to be inspected and be ok'd before they could operate, correct. Mr. Prince stated that was correct.

Mr. Deal asked if he was correct in assuming there would be no painting of vehicles at this location. Mr. Prince said it was not addressed, that would be a different building occupancy and they would have to address that through a different building code. Mr. Deal stated that was a significant issue and for his part he would like to have an answer before moving forward on this.

Mr. Prince said they could add another condition limiting the number of vehicles that could be put on the lot for sale. He said for the benefit of Dr. Helman this Use Variance would give him the flexibility if this tenant would fall through, to market it to someone else, considering all the difficulty he has had getting a tenant in this location .

Mr. Bellovich said he felt it was prudent to have the individual who was actually going to be renting this building at the next meeting so that all of their questions could be answered; he made a motion to continue this proposed ordinance until the May 4th meeting with a second by Mr. Hixenbaugh the motion carried.

Clerk Block read **RESOLUTION NO. 2011-05** opening it for public hearing.

RESOLUTION NO. R2011-05

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY
MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD
OF ZONING APPEALS FOR THE PROPERTY LOCATED AT;
3515 Bremen Highway, Mishawaka, Indiana**

(Use Variance to allow more than 2 tenants and Developmental variance to allow 17 parking spaces from 24 spaces 3515 Bremen Highway)

Daryl Knip, Vice President of Operations Abonmarche Consultants, LLC 750 Lincolnway East, South Bend said he was representing John Cataldo, owner of Bruno's Pizza in his request to tear down the building on Bremen Highway at 3515 Bremen Highway and construct a new building with a 14,000 square feet carry out Pizza Parlor in back leaving about 28,00 square foot in the front for retail to allow a Use Variance for a two tenant structure, and a Developmental Variance to allow 17 parking spaces from 24 spaces.

Mr. Roggeman asked how quickly this would be started. Mr. Knip stated no schedule has been set they do have a little interest from real dealers but would not be going forward with it if they are not able to get this approval.

Question was called for at 7:26 p.m. on **RESOLUTION NO. R2011-05** with the vote being 8 to 0, in favor.

Clerk Block read **RESOLUTION NO. R2011-06** opening it for public hearing.

**RESOLUTION NO. R2011-06
RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, APPROVING A REPORT OF COMPLIANCE WITH STATEMENT OF
BENEFITS FOR CERTAIN PROPERTY OWNERS**

(2010 Tax Abatement Compliance Reports with Statement of Benefits)

Ken Prince, Mishawaka City Planner stated he was presenting to the Council Abatement Compliance Reports, that by law since 1991 every entity that has received a Tax Abatement must file a CF1 Compliance Report with the city for approval. He said the city presently has 7 Tax Abatements for six companies:

- WF Associates (n/k/a Holladay Mishawaka, LLC) this was for the AM General Byrkit Facility, as reported in their compliance report they are down 66 jobs, and they anticipated employment of 300. In 2009 when their employment was at 340, their explanation was based on the difficulty of selling the Hummer Brand and the declining use of the Military H1 Vehicle. He said he wanted to note this was the last year compliance of the 10 year period of this abatement and they have demonstrated overall compliance.
- Patrick Industries, Inc. (Metals Division) 2 Mr. Prince stated was one of the success stories in 2011 year. A number of years ago the Council called them in for discussion for lack of compliance and the difficulties they were having. This year, he was pleased to report they are 22 jobs above their stated employment from when they received the abatement. Also it should be noted the salaries associated with that have been commensurate with the abatement they have received based on their total salary. Patrick Industries is the one entity that has both a real and personal property tax abatement.
- Jamil Packaging Corporation's total employment is up to 73 which is 11 more jobs then last year, and 9 over the employment projected level they had indicated to the Council.
- Nyloncraft, Inc. is currently not in compliance they are 87 jobs below the estimated 390 jobs envisioned when they received the abatement but what was very positive was based on the automobile nature of the industries they serve was they employed 63 more jobs in 2010 compared to their 2009 compliance report.
- BD SJRMC Mishawaka Development, LLC employment to date was up to 243 employees and they reported originally when they received the abatement they were at 370. The payroll has actually exceeded the limit they set by close to 3 million dollars and they also indicated occupancy of the building has been ramping up and they anticipate it to be at 50% in the near future. Mr. Prince stated that bades well for the long term quote for the Medical Office Building.
- Long Term Care Investments, LLC has improved since 2009 and stated when they received the abatement that it was a long ramp up period for nursing home activities. In their CF1 report they stated this was the first year they have had employment at the facility and indicated 67 jobs had been filed and 120 jobs were part of the original estimate. Last year they were still completing construction and are ramping up as stated they were going to do.

Mr. Prince said they were recommending approval of the compliance reports.

Mr. Hixenbaugh extended his appreciation to Mr. Prince and his staff for compiling this information in summary, which was very helpful as the Council goes through this process every year. He said

the record should also reflect the fact that in a Budget and Finance Committee meeting, representatives of Bremner Duke affiliated with St. Joseph Regional Medical Center Office Building as well as representatives of the hospital itself had a chance to make a presentation to the Council. Mr. Hixenbaugh stated that helped the Council to appreciate their willingness to help them work through some questions and concerns that they had with regards to their specific compliance report.

Mr. Hixenbaugh said clearly the trend was much more favorable this year then it was last year in terms of additional employment and they hope that trend continues. He said he would encourage the Council to look very diligently at these reports as they have done in the past and when the facts warrant it to call in the recipient's of these abatements. Mr. Hixenbaugh said certainly they are pleased to hear the good news from those that have received the abatements, but where the news is not good and the projections that were made are not fulfilled it is incumbent on the Council to ask questions and have dialogue with the recipients so the facts can be gathered.

Question was called for at 7:33 p.m. on **RESOLUTION NO. R2011-06** with the vote being 8 to 0 in favor.

UNFINISHED BUISNESS

Michael Thompson 201 North State Street said he was representing the Back Yard Chickens group and passed out literature to the Council. He asked again for the Council to think favorably on allowing Mishawaka residents to raise chickens in the city. Mr. Hixenbaugh replied to Mr. Thompson that the Council needed to have an ordinance presented to them by the Administration or a Councilman who was willing to sponsor this idea in order to have something to vote on.

Mr. Compton stated that at some point in Mishawaka it was legal to have chickens in your back yard and at some point they made them illegal, and he was reluctant to move one way or another until he sees how an ordinance would define it.

Mrs. McClure said as Mr. Thompson's 4th District Councilman she would invite him to attend her neighborhood watch meeting and see how the people in their district felt about the chickens. She said as of present she has not heard from anyone in her district express anything positive in regards to this.

NEW BUSINESS

Clerk Block Read **PROPOSED ORDINANCE NO. 2011-04** opening it for public hearing.

PROPOSED ORDINANCE NO. 2011-04

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA

(Rezone from I-1 Light Industrial to R-1 Single Family – 1111 Division St.)

Dan Bilancio 2337 Normandy Drive said he was the legal representative and executor of the estate of his Anna Zirille who lived at this residence for 62 years. He said back in March they sold the property and the purchaser was told by his financial institution that it needed to be rezoned, so that was their request at this time.

Question was called for at 7:50 p.m. on **PROPOSED ORDINANCE NO. 2011-04** with the vote being 8 to 0 in favor, thus it becomes **ORDINANCE NO. 5302**.

Mr. Emmons announced his 1st District meeting usually was held on the third Thursday of the month but this month because of Holy Thursday it would be on the fourth Thursday April 28th at 7:00 p.m. and he too would be having Gary West Director of Engineering speak on the updates of what was going around the city.

Mr. Deal stated Wednesday April 20th would be his 3rd District meeting at Twin Branch School at 7:00 p.m. with Gary West, Director of Engineering being the guest speaker, discussing updates in the city.

Mrs. McClure invited everyone to attend her 4th District meeting at Beiger School at 7:p.m. on April 21, 2011 with George Obren from Code Enforcement as her guest speaker.

There being no further business to come before the Council, Vice President Compton adjourned the meeting at 7:55 p.m.

Deborah S. Block, _____/s/
Deborah S. Block, MMC
City Clerk

S. Michael Compton _____/s/
S. Michael Compton
Presiding Officer